

Advisory Opinion

IECDB AO 2009-08

April 30, 2009

Ben Woodworth
Via Email

Dear Mr. Woodworth:

This opinion is in response to your email letters of April 16, 2009, and April 17, 2009, requesting an opinion from the Iowa Ethics and Campaign Disclosure Board pursuant to Iowa Code section 68B.32A(12) and Board rule 351—1.2. We note at the outset that the Board's jurisdiction is limited to the application of Iowa Code chapters 68A and 68B, Iowa Code section 8.7, and rules in Iowa Administrative Code chapter 351. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

FACTUAL STATEMENT:

You advise us that until March 6, 2009, you were employed by the Iowa Department of Public Health (IDPH) as part of the Iowa Brain Injury Services Program. You were responsible for supervising contracts with the Iowa Association of Community Providers (IACP). You have been contacted by IACP concerning employment to do brain injury training and consultation.

The funding for the IACP position would be funded, in part, through a grant that IDPH received from a federal source. IDPH then uses that funding to award grants to local entities in Iowa and enters into contracts for services. You participated in compiling information for the application of the grant on behalf of IDPH. The contract to IACP was awarded on April 10, 2009, by the Division Director of Behavioral Health. You were not part of the grant awarding decision.

QUESTION:

Is it permissible for you to accept private sector employment when the funding for the position would come from a grant that you assisted in securing while a state employee?

OPINION:

Two sections of the state code of ethics in Iowa Code chapter 68B and the Board's rules in 351—Chapter 6 address post state employment issues. First, Iowa Code section 68B.5A prohibits certain lobbying activities for two years after leaving state government. It does not appear from your request that you will be engaging in lobbying activities and this section would not apply.¹

Iowa Code section 68B.7 also places limitations on the ability of state officials and state employees from accepting employment. We first note that the statute was amended by the 2009 General Assembly.² However, those amendments do not impact the analysis in this opinion.³ The statute, in pertinent part, prohibits a state official or employee for two years after leaving state service from receiving compensation “in relation to any case, proceeding, or application” the state official or employee “was directly concerned and personally participated during the period” of state “service or employment.”

In reviewing your situation, we believe that your conduct does not rise to the level of being “directly concerned” or “personally participated” as contemplated by the statute. The evil the statute seeks to prevent involves “influence peddling” whereby a state official or employee can help direct the outcome of a decision to assist a particular person and then trade on that help to gain private sector employment with the same person.⁴

You assisted in securing funding for the grant, but you were not “directly concerned” or “personally participated” in awarding the grant/contract to IACP. If you had participated in the IACP application to IDPH for the grant, the analysis of this opinion would be different.⁵ Therefore, you could accept employment with IACP as set out in this opinion.

BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair
Janet Carl, Vice Chair
Gerald Sullivan
Betsy Roe
John Walsh
Patricia Harper

Submitted by: W. Charles Smithson, Board Legal Counsel

¹ See Iowa Code section 68B.2(13) and Board rule 351—8.1 for the definition of “lobbying”.

² See 2009 Iowa Acts, Senate File 52, section 3.

³ For a full discussion on the history of Iowa Code section 68B.7 and the application of the amendments see IECDB Advisory Opinion 2009-07.

⁴ In fact, 2009 Iowa Acts, Senate File 52, section 6, directs the Code Editor to rename Iowa Code section 68B.7 from “Other activities — two year ban” to “Prohibited Use of Influence”.

⁵ The fact that you participated in prior contracts between IDPH and IACP is irrelevant as the funding for the position is based on this particular grant/contract and not previous ones.